

April 13, 2020

SUBMITTED ELECTRONICALLY

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460
(202) 566-1667

Re: FOIA request for records related to interagency review of *The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks*, NHTSA-2018-0067; EPA-HQ-OAR-2018-0283; FRL-10000-45-OAR (March 31, 2020)

Dear National Freedom of Information Officer:

Environmental Defense Fund respectfully requests records of the U.S. Environmental Protection Agency pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and applicable EPA regulations, 40 C.F.R. §§ 2.100–2.406. The requested records relate to the EPA and National Highway Traffic Safety Administration’s joint rulemaking, proposed as *The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks*, 83 Fed. Reg. 42,986 (Aug. 24, 2018), and finalized in relevant part as *The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks*, NHTSA-2018-0067; EPA-HQ-OAR-2018-0283; FRL-10000-45-OAR (March 31, 2020) (“Final Rule”).

Records Requested

EDF requests all records that fall into one or more of the following three categories:

1. EDF requests all records relating to the Final Rule or drafts thereof that any EPA employee(s) transmitted to or received from any Department of Transportation employee(s) between January 14, 2020 and March 30, 2020, and that were not also transmitted to the Office of Information and Regulatory Affairs (“OIRA”) within the White House Office of Management and Budget. The requested records include, but are not

limited to, any “hard copies of EPA’s technical feedback on the draft final rule” that were “provided to DOT outside the formal inter-agency review process,” as described in the attached letter from Senator Thomas Carper to EPA Inspector General Sean O’Donnell.¹

2. EDF requests any records created or transmitted from the time period beginning December 1, 2019 up through and including the date you conduct your search for records, documenting instructions received by EPA employees not to submit materials to OIRA as part of the inter-agency review for the Final Rule, as described in Senator Carper’s letter.²
3. EDF requests any records created or transmitted from the time period beginning December 1, 2019 up through and including the date you conduct your search for records, that address the requirements of Executive Order 12,866 or Section 307(d) of the Clean Air Act, 42 U.S.C. § 7607(d), to disclose materials exchanged between agencies or materials exchanged between an agency and the White House Office of Management and Budget related to the Final Rule or drafts thereof.

On April 3, 2020, EDF submitted a request for records generated through interagency review of the Final Rule pursuant to Executive Order 12,866, which requires certain materials to be provided to OIRA. *See* Exec. Order 12,866 § 6(a)(3)(B), (C), and (E) (Sept. 30, 1993) (describing interagency review materials that the agency “shall provide to OIRA” and requiring documents related to OIRA review to be made available to the public). By contrast, this second, separate request seeks records relating to the draft Final Rule that were exchanged between EPA and DOT, but not transmitted to OIRA. EDF intends for there to be no overlap between the records responsive to this request and the records responsive to its previous request. This request does not modify—and should not delay the processing of—the earlier request.

EDF further requests any emails or other correspondence in which responsive records have been transmitted or preserved as attachments. In accordance with 5 U.S.C. § 552(f)(2) (describing “record[s]”), EDF intends for “correspondence” to be broadly construed, and to include, without limitation, electronic and hardcopy communications, text messages, voice mails, records of phone calls, records of meetings, meeting invitations, calendars, written notes, and correspondence transmitted through any electronic platform.

EDF respectfully requests that all records responsive to this request be produced in the form in which they have been preserved. Any responsive electronic records, in particular, should be produced in the file format in which they have been preserved (e.g., “.doc” computer files should be produced in “.doc” format). EDF requests that metadata be preserved and produced along with all responsive electronic records.

If any of the information sought in this request is deemed by EPA to be properly withheld under a FOIA exemption, 5 U.S.C. § 552(b), please provide EDF with an explanation, for each

¹ Letter from Sen. Thomas Carper to EPA Inspector General Sean O’Donnell, at 3, Feb. 26, 2020, https://www.epw.senate.gov/public/_cache/files/9/2/9225bb67-dff1-4711-aebe-2eea6fc7da76/649E0C532863CA79917CDE2593A14C62.02-26-20tctoepaigcarssecretscience.pdf.

² *Id.*

such record or portion thereof, sufficient to identify the record and the particular exemption(s) claimed. Additionally, please indicate which of the three numbered categories of requested records above apply to the withheld information.

Request for Expedited Processing

EDF respectfully seeks expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E)(i) and 40 C.F.R. § 2.104(f). There is a “compelling need” and “urgency” to inform the public of the information sought in this request, and one of EDF’s primary activities is disseminating to the public information about threats to public health and the environment, as well as policy responses to those threats. *Id.* § 2.104(f)(1)(ii). In support of this request I certify that the following information is true and correct to the best of my knowledge and belief:

1. EDF engages in extensive, daily efforts to inform the public about matters involving public health and environmental policy. For example, EDF has multiple channels for distributing information to the public, including through direct communication with its more than two million members and supporters, active engagement on social media, and frequent appearances by staff in major media outlets.³
2. EDF employs several staff “whose primary professional activity or occupation is information dissemination.” 40 C.F.R. § 2.104(f)(3). For example, the responsibilities of EDF’s Legal and Regulatory Affairs Communications Director primarily include disseminating information about developments in climate change law and policy through press releases, interviews, and EDF’s website, and working with news media to promote accurate, informative reporting on EDF’s work and environmental policy.
3. There is urgency to inform the public about the federal government actions taken in the Final Rule, which dramatically weakens federal clean car standards. This major rulemaking, as well as the possible irregularities in the interagency review process,⁴ are the

³ See, e.g., Statement of EDF President Fred Krupp, Clean Cars Rollback Weakens Life-Saving Protections for America’s Health, Economy, Environment, March 30, 2020, <https://www.edf.org/media/clean-cars-rollback-weakens-life-saving-protections-americas-health-economy-environment>; Juliet Eilperin and Brady Dennis, *Trump Administration to Revoke California’s Power to Set Stricter Auto Emissions Standards*, WASH. POST (Sept. 17, 2019), https://www.washingtonpost.com/climate-environment/trump-administration-to-revoke-californias-power-to-set-stricter-auto-emissions-standards/2019/09/17/79af2ee0-d97b-11e9-a688-303693fb4b0b_story.html (quoting EDF Senior Attorney Martha Roberts); Jason Mathers, *4 New Developments that Prove Electric Trucks and Buses Are Gaining Momentum*, EDF Energy Exchange Blog (Aug. 21, 2019), <http://blogs.edf.org/energyexchange/2019/08/21/4-new-developments-that-prove-electric-trucks-and-buses-are-gaining-momentum/>; Martha Roberts, *Trump Administration Ends Talks with California, Presses Ahead with Clean Car Standards Rollback*, EDF Climate 411 Blog (Feb. 21, 2019), <http://blogs.edf.org/climate411/2019/02/21/trump-administration-ends-talks-with-california-presses-ahead-with-clean-car-standards-rollback/>; Chester France, *Administration Cooks the Books to Justify Rollback of the Clean Car Standards*, EDF Climate 411 Blog (Aug. 7, 2018), <http://blogs.edf.org/climate411/2018/08/07/administration-cooks-the-books-tojustify-rollback-of-the-clean-car-standards/>; Martha Roberts, *The Attack on Our Clean Cars is the Biggest Scandal at EPA*, THE HILL (May 8, 2018), <https://thehill.com/opinion/energy-environment/386692-the-attack-on-our-clean-cars-is-the-biggest-scandal-at-epa>.

⁴ Maxine Joselow & Sean Riley, *Carper to IG: Trump Appointees Overriding Career Staffers*, E&E NEWS (March 22, 2020), <https://www.eenews.net/stories/1062498985>.

subject of significant public interest.⁵ It will impact virtually every American by permitting substantial increases in climate-altering and health-harming pollution, as well as fuel costs,⁶ during a public health and economic crisis.⁷

4. The significance of the Final Rule's climate impacts is underscored by the fact that the transportation sector is the largest source of U.S. greenhouse gas emissions.⁸ And the urgency of addressing these impacts is highlighted in recent reports of the Intergovernmental Panel on Climate Change, which find that we risk exceeding the Paris Agreement goal of limiting global warming to 1.5° Celsius—with catastrophic effects—as soon as 2040.⁹ Moreover, the Final Rule affects new vehicles starting in Model Year 2021, which is already underway. This creates further urgency for the public to understand and respond to the Final Rule as it goes into effect. Accordingly, keeping the public informed about the deeply harmful rollback of clean car standards is an urgent, vital component of EDF's work.

Request for Fee Waiver

As a non-partisan, non-profit organization that provides information in the public interest, EDF respectfully requests a waiver of fees associated with this request, pursuant to 40 C.F.R. § 2.107(l)(1) and 5 U.S.C. § 552(a)(4)(A)(iii).

First, disclosure of the requested information is in the public interest. 40 C.F.R. § 2.107(l)(2). The requested records concern “operations or activities of the government,” *id.* § 2.107(l)(2)(i), because they relate to the development of a major EPA rulemaking. The requested

⁵ See, e.g., Ellen Knickmeyer & Tom Krisher, *Trump Rollback of Mileage Standards Guts Climate Change Push*, ASSOCIATED PRESS (March 31, 2020), <https://apnews.com/98f311a6d4275334a9e4d3a804cd2e1a>; Maxine Joselow, *Battle Lines Drawn as Trump Finalizes Rollback*, E&E News (March 31, 2020), <https://www.eenews.net/greenwire/stories/1062751533>; Margo Oge, *Trump's Clean Cars Rollback: A First Test of our Post-Coronavirus Society*, FORBES (March 31, 2020), <https://www.forbes.com/sites/margooge/2020/03/31/trumps-clean-cars-rollback-a-first-test-of-our-post-coronavirus-society/#60d7054e7591>; Coral Davenport, *U.S. to Announce Rollback of Auto Pollution Rules, a Key Effort to Fight Climate Change*, N.Y. TIMES (March 30, 2020), <https://www.nytimes.com/2020/03/30/climate/trump-fuel-economy.html>; Anna M. Phillips, *Trump to Roll Back Fuel Economy Standards, Reversing Major Effort to Combat Climate Change*, L.A. TIMES (March 30, 2020), <https://www.latimes.com/politics/story/2020-03-30/trump-rolls-back-car-pollution-standards>; Ben Foldy, *Push to Roll Back Auto-Emissions Rules Hits a Roadblock*, WALL STREET JOURNAL (Feb. 29, 2020), <https://www.wsj.com/articles/push-to-roll-back-auto-emissions-rules-hits-a-roadblock-11582984800>.

⁶ See EDF Fact Sheet, *Trump Administration Moves Ahead with Harmful Clean Cars Rollback*, https://www.edf.org/sites/default/files/Cars_Final_Rollback_Factsheet.pdf (estimating that the Final Rule will result in an additional 1.5 billion metric tons of climate pollution, 1,8500 premature deaths, and \$244 billion paid at the gas pump).

⁷ Maxine Joselow, *3 Ways the Rollback Could Worsen the Outbreak*, E&E NEWS (March 30, 2020), <https://www.eenews.net/climatewire/stories/1062735243>.

⁸ EPA, *Sources of Greenhouse Gas Emissions*, <https://www.epa.gov/ghgemissions/sources-greenhouse-gas-emissions> (last visited March 30, 2020).

⁹ See, e.g., Intergovernmental Panel on Climate Change, *Special Report: Global Warming of 1.5° C*, Ch. 1 at 81 (Oct. 7, 2018), https://www.ipcc.ch/site/assets/uploads/sites/2/2019/05/SR15_Chapter1_Low_Res.pdf (“If the current warming rate continues, the world would reach human-induced global warming of 1.5°C around 2040.”).

records are “likely to contribute” “significantly,” *id.* § 2.107(l)(2)(ii), (iv), to public understanding of EPA’s operations in developing the rule by informing the public about key aspects of the required interagency review process. None of this information is currently in the public domain, as neither EPA nor NHTSA has published any interagency review materials in the rulemaking dockets. And the requested information will contribute to “public understanding,” *id.* § 2.107(l)(2)(iii), because EDF is well positioned to disseminate the information to its members and the public at large. We routinely issue press releases, action alerts, blog posts, fact sheets, reports, analyses, and other public outreach materials.¹⁰ We fully intend to disseminate newsworthy information received in response to this request. In addition to our own capacity to convey information to the public, the information that EDF has obtained through FOIA has been disseminated through news articles to a wide audience, enhancing public knowledge.¹¹

Second, disclosure of the requested information is not primarily in EDF’s commercial interest. 40 C.F.R. § 2.107(l)(3). EDF is a non-profit organization that has no commercial, trade, or profit interests that would be furthered by the requested disclosure. *Id.* § 2.107(l)(3)(i). Rather, we are seeking the disclosure to promote the public interest by disseminating information and aiding our work to reduce vehicle pollution. Accordingly, we respectfully request that the documents be furnished without charge.

In the event EDF’s request for a fee waiver is denied or if you have any questions about this request, please contact me immediately by telephone at (303) 447-7205 or by email at ahenderson@edf.org.

Respectfully submitted,

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Boulder, CO 80302

¹⁰ See, e.g., Ben Levitan, *Public Records Confirm EPA’s “Censored Science” Proposal was an End-Run Around Congress*, EDF Climate 411 Blog (Nov. 12, 2019), <http://blogs.edf.org/climate411/2019/11/12/public-records-confirm-epas-censored-science-proposal-was-an-end-run-around-congress/>; EDF, Promoting Government Transparency (last updated Dec. 2019), <https://www.edf.org/climate/promoting-government-transparency>.

¹¹ See, e.g., Scott Waldman, *Emails: Trump Aide Had Blueprint to Unravel Climate Science*, E&E NEWS (Dec. 10, 2019), <https://www.eenews.net/climatewire/stories/1061769389/> (reporting information disclosed through an EDF FOIA request); Ellen Knickmeyer & Seth Borenstein, *Emails: Trump Official Pressed NASA on Climate Science*, ASSOCIATED PRESS (June 14, 2019), <https://apnews.com/4ec9affd55a345d582a4cc810686137e> (same); Ryan Beene, *White House Told EPA to Ready California Autos Challenge in 2017*, BLOOMBERG (June 1, 2018), <https://www.bloomberg.com/news/articles/2018-06-01/white-house-told-epa-to-readycalifornia-autos-challenge-in-2017>, (same); Ellen Knickmeyer, *Emails Show Cooperation Among EPA, Climate-Change Deniers*, ASSOCIATED PRESS (May 26, 2018), <https://apnews.com/64cd37b0503440c0b92e6ca075f87dd4> (same); Coral Davenport & Eric Lipton, *Scott Pruitt Is Carrying Out His E.P.A. Agenda in Secret, Critics Say*, N.Y. TIMES (Aug. 11, 2017), <https://www.nytimes.com/2017/08/11/us/politics/scott-pruitt-epa.html> (same).